

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASHLAND LLC)
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)
50 E. RiverCenter Blvd.)
P.O. Box 391)
Covington, Kentucky 41012-0391)
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Plaintiff,)
)
)
v.) Case No. 1:18-cv-1785
)
)
LEE FRANCIS CISSNA, in his official capacity,)
Director of United States Citizenship)
and Immigration Services)
)
20 Massachusetts Ave. NW)
Washington, DC 20529)
)
)
Defendant.)
)

COMPLAINT

Plaintiff, Ashland LLC, through counsel, hereby files this Complaint for declaratory and injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, 5 U.S.C. §§ 551 *et seq.*, 5 U.S.C. §§ 701 *et seq.* In support of its Complaint, Plaintiff states as follows:

JURISDICTION AND VENUE

1. This Court has federal question jurisdiction in this case under 8 U.S.C. § 1329, 28 U.S.C. §§ 1331, 1361, 1367(a), and 2201; 5 U.S.C. §§ 501 *et seq.* and 701 *et seq.*
2. Ashland may seek judicial review upon denial of its visa petition without any further administrative appeal. Ashland was not required to exhaust its administrative remedies before filing this lawsuit.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(e)(1) and 1391(e)(2). Defendant is an agency of the federal government and located in the District of Columbia.

PARTIES

4. Plaintiff Ashland LLC (“Ashland”) is headquartered in Covington, Kentucky but operates in more than 100 countries as a global leader in providing specialty chemical solutions to customers in a wide range of consumer and industrial markets. Ashland has annual sales of approximately \$6 billion.

5. Defendant Lee Francis Cissna (“Cissna”) is Director of United States Citizenship and Immigration Service (“USCIS” or “Defendant”), which is an agency of the federal government within the Department of Homeland Security. USCIS is charged with overseeing lawful immigration to the United States, pursuant to the Immigration and Nationality Act (hereinafter “INA”), 8 U.S.C. §§ 1101 et seq., and the regulations implementing the INA. Pursuant to this authority, USCIS adjudicates applications for protections and benefits provided under the INA, including petitions for temporary nonimmigrant H-1B, or “Specialty Occupation,” visas. As Director, Cissna is responsible for USCIS’s policies, practices, and procedures, and oversees the officers responsible for adjudicating H-1B visa petitions.

FACTS

H-1B Visa Summary

6. A United States employer may file an H-1B nonimmigrant employment visa petition on behalf of an alien worker for a specific position.

7. An H-1B visa allows an alien worker to obtain temporary admission to the United States to perform services in a “specialty occupation.” A “specialty occupation” is defined as an

occupation that requires the theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

8. To qualify as a specialty occupation, the position must satisfy at least one of the following criteria: (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position; (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree; (3) The employer normally requires a degree or its equivalent for the position; or (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

USCIS approves Ashland's petition to employ Sharma as a Staff Auditor and a Budget Analyst.

9. Hemant Sharma ("Sharma") is a citizen of India.

10. Sharma is a highly educated and trained financial expert. He earned a Masters of Business Administration ("MBA") degree, with a concentration in finance, from Wake Forest University in May 2012.

11. In 2014, Ashland filed a petition for an H-1B visa for a Staff Auditor position, for which Sharma was the beneficiary. This petition received the designation "EAC-14-136-54477" (hereinafter "Petition 1").

12. USCIS granted Petition 1.

13. Ashland made a business decision to cancel Sharma's Staff Auditor position.

14. In 2015, Ashland filed a petition for an H-1B visa for a Budget Analyst SGA position, for which Sharma was the beneficiary. This petition received the designation “EAC-15-110-51802” (hereinafter “Petition 2”).

15. USCIS granted Petition 2.

16. Sharma first entered the United States on his H-1B visa for the Budget Analyst SGA position on April 12, 2015.

USCIS denies Ashland’s petition to employ Sharma as a Financial Analyst.

17. On January 16, 2018, Ashland submitted an amended H-1B petition and an application for an extension of Sharma’s H-1B stay because Ashland wished to promote Sharma to a Financial Analyst II position. This petition received the designation “EAC-18-076-50188” (hereinafter “Amended Petition”).

18. Ashland submitted evidence that Sharma’s job duties would entail preparation and consolidation of Ashland’s company-wide monthly financial results, as well as calculating and analyzing the monthly cost, volume, and price variances among various regions and business segments. He would also, among other duties, be responsible for developing, maintaining, and distributing various financial reports and financial models as necessary.

19. Ashland submitted evidence that Sharma’s role would primarily involve implementing, administering, monitoring, and providing oversight of Ashland’s sales and general and administrative financial budgets. These duties required the theoretical and practical application of accounting or finance knowledge and skills that generally can only be obtained by attaining a bachelor’s degree in accounting or finance, or a closely related field.

20. Ashland requires applicants to similar positions to have at least a bachelor’s degree in accounting or finance or a closely related field.

21. On January 22, 2018, USCIS requested further evidence that Sharma's Financial Analyst II position qualified as a "specialty occupation." USCIS stated that it "interprets the term degree in the [four statutory criteria] to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position." USCIS further alleged that Ashland "did not submit any evidence to show that the position offered to the beneficiary qualifies as a specialty occupation."

22. USCIS's request for evidence was unnecessary and stated an arbitrary and capricious interpretation of the term "degree." Regardless, Ashland timely submitted more evidence on April 9, 2018.

23. Ashland submitted substantial additional evidence, including details about the specific job duties and percentage of time that Sharma would be expected to spend on each duty, in the form of a seven-page, single-spaced letter from Sharma's manager, Helen Albano, Director of Financial Planning and Analysis at Ashland. Ashland also submitted position descriptions for similar positions within Ashland (all of which required finance or accounting related degrees as a minimum for entry into the position).

24. Ashland also submitted examples of Sharma's work product in the form of various extensive financial spreadsheets, which show the complex and specialized financial knowledge and skills that Sharma employed.

25. Ashland also submitted a print-out of the "Financial Analyst" entry in the Department of Labor's Occupational Outlook Handbook, which establishes that financial analysts must have a bachelor's degree in finance, accounting, or a closely related degree.

26. Finally, Ashland submitted an expert opinion from Professor Ryan Halley, Ph. D., Professor of Finance at George Fox University. Dr. Halley's opinion states that a finance-related bachelor's degree is necessary for entry into the position.

27. On April 23, 2018, USCIS denied Ashland's Amended Petition, purportedly because Sharma's Financial Analyst II position did not meet the requirements of a "specialty occupation."

USCIS's decision to deny Ashland's Amended Petition was arbitrary and capricious.

28. Contrary to USCIS's arbitrary and capricious determination, Sharma's Financial Analyst II position did satisfy the statutory requirements for a "specialty occupation."

29. USCIS's denial was erroneous and arbitrary and capricious because, among other reasons, it applied an incorrect interpretation of the "specialty occupation" criteria and did not consider evidence in the record.

30. USCIS's denial was primarily based on an erroneous interpretation of 8 C.F.R. § 214.2(h)(4)(ii), which defines specialty occupations as those "which require[] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including...business specialties [and] accounting...and which require[] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation."

31. USCIS arbitrarily and capriciously interpreted the regulatory text "bachelor's degree or higher in a specific specialty" to mean "bachelor's degree or higher in a specific field of study."

32. USCIS's interpretation would effectively exclude any position from qualifying as a specialty occupation unless there was a single degree that would give employees the skills necessary to complete the duties of the position. This is an absurd result.

33. USCIS's interpretation has no basis in law and has, in fact, been rejected by USCIS's Administrative Appeals Office ("AAO") as too narrow. Instead of requiring a degree in a specific "field of study," the AAO has explained that closely related fields of study will satisfy the degree in the specific specialty requirement. Matter of S-S- LLC, ID# 401365 (AAO May 22, 2017). Where the body of specialized knowledge between the related fields is essentially the same, more than one degree can satisfy the degree in the specific specialty requirement.

34. Finance and accounting degrees share essentially the same body of specialized knowledge and the AAO has specifically recognized this.

35. Among other failures, USCIS denied Ashland's Amended Petition based on willful blindness to substantial evidence in the record.

36. USCIS expressly rejected the expert opinion by Dr. Halley that the Financial Analyst II position was a specialty occupation for the arbitrary and capricious reason that it was not accompanied by documents.

37. USCIS also ignored abundant evidence that Helen Albano provided in response to USCIS's request for further evidence about Sharma's job duties.

38. In its Amended Petition, Ashland provided a list of six broad job duties that Sharma would be expected to complete. In its response to USCIS's request for further evidence, Helen Albano provided seven single-spaced pages of detailed job duties, including the percentages of time Sharma would spend on each job duty.

39. USCIS characterized this additional information as merely “an updated list of job duties with percentage time.” It did not acknowledge or consider any of the detailed information describing the specifics of Sharma’s job duties.

40. USCIS completely ignored the examples of Sharma’s work product that Ashland submitted. Ashland submitted approximately 14 examples of the incredibly complex financial spreadsheets that Sharma created or maintained for Ashland. The spreadsheets that Ashland submitted as examples clearly demonstrate the highly specialized financial knowledge and analytical skills necessary to successfully complete the job duties of Sharma’s Financial Analyst II position.

41. Ashland sufficiently established that a baccalaureate or higher degree or its equivalent in a specific specialty that is directly related to the Financial Analyst II position is normally the minimum requirement for entry into the Financial Analyst II position.

42. Ashland sufficiently established that this degree requirement is common to the industry in parallel positions among similar organizations. Alternatively, Ashland also sufficiently established that its particular position is so complex or unique that it can be performed only by an individual with a degree such as Sharma.

43. Ashland sufficiently established that it normally requires a degree or its equivalent for the Financial Analyst II position.

44. Ashland sufficiently established that the nature of the specific duties for Sharma’s Financial Analyst II position was so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

45. USCIS's decision to deny Ashland's Amended Petition was a clear error. USCIS failed to provide a rational basis for its decision and did not sufficiently consider the evidence in the record. As such, USCIS's decision was arbitrary and capricious.

CAUSE OF ACTION

46. Plaintiff Ashland restates and incorporates herein by reference each and every allegation contained in paragraphs 1-45 above as if fully set forth herein.

47. The Administrative Procedures Act requires this Court to hold unlawful and set aside any agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

48. Here, USCIS acted arbitrarily, capriciously, and contrary to law in violation of the Administrative Procedures Act by denying Ashland's H-1B visa petition on behalf of Sharma.

49. As a result of USCIS's arbitrary and capricious decision, Ashland has been prejudiced and is suffering irreparable injury because it can no longer lawfully employ Sharma in the United States. It is thus unable to fully benefit from his specialized professional services as a financial analyst.

50. Ashland seeks a declaration that USCIS's arbitrary and capricious decision constitutes a violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A), in that it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

51. Ashland also seeks injunctive relief or, alternatively, a writ of mandamus requiring USCIS to reconsider and approve Ashland's application for an H-1B visa for Sharma.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ashland respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendant, and grant the following relief:

1. Declare that Defendant's decision to deny Plaintiff's Amended Petition was arbitrary and capricious in violation of the Administrative Procedures Act;
2. Issue injunctive relief and/or a writ of mandamus commanding USCIS to reopen Plaintiff's Amended Petition and grant the H-1B visa to beneficiary Sharma;
3. Award reasonable attorney's fees and costs; and
4. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

/s/ August Johannsen
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¹ Pursuant to Local Rule 5.1(c)(1), my DC Bar Number is included even though it is inactive. I certify that I remain qualified to practice in this court pursuant to Local Rule 83.8(a)(2), because I am an active member in good standing of the Bar of Kentucky (KBA No. 97690), where I maintain my principal law office.